

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.76 of 1998

Shri Irineu Figueiredo,
aged about 39 years,
Baker by profession,
r/o. Thanvaddo,
Betalbatim, Salcete, Goa. Appellant.

Vs.

1. Shri Xavier Piedade Gonsalves,
owner of the vehicle,
r/o. House No.263,
Mangor Hill,
Vasco-da-Gama, Goa.

2. National Insurance Co. Ltd.,
Insurer of the vehicle,
Marchon Building, 2nd Floor,
Margao, Goa.

3. Driver of the vehicle,
Mr. Esseki Mathu,
r/o. House No.154,
Malbhat, Margao,
Salcete, Goa. Respondents.

Mr. C. A. Coutinho, Advocate for the appellant.

None for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JULY 18, 2003.

ORAL JUDGMENT :

The respondents though served, not present.
The appellant is the original claimant who met with an
accident on 31.5.1993. Respondents No.1 and 3, the
owner and the driver did not file written statement,
denying the accident. There is also no evidence nor any
plea denying the averments that the vehicle was being
driven by respondent No.3 in a rash and negligent

manner. Written statement was only filed on behalf of respondent No.2, who in paragraph 4 admitted that at the time of accident there was a valid insurance policy. In the written statement of respondent No.2, a plea of denial was taken. Such a plea of insurance company could not be taken unless conclusion was pleaded and Court allowed the same. This was not done.

2. The claimant examined himself. He also examined Head Constable Ramesh Prabhu and the panch witness Jim Gomes, as also his employer Franscuino Gomes, as CW.2. The learned Claims Tribunal framed issues as to whether the claimant had proved that the respondent No.3 drove the vehicle in a rash and negligent manner, at a fast speed and dashed against the claimant. The fact that the appellant was admitted in the hospital, has come on record. The learned Claims Tribunal has criticised that the accident took place near the Police Out-Post and the claimant chose not to complain at the Out-post on the very same day. A person who is hit by a vehicle cannot rush to the Out Post, the first reaction is to rush the person to a hospital. The criticism of the learned Tribunal on this aspect has to be rejected. In my opinion, considering the evidence on record, it has to be held that the issue No.1 has been proved by the appellant, as there was no denial by

respondents No.1 and 3 in respect of the accident and also that the vehicle was being driven in a rash and negligent manner.

3. We then come to the issue of compensation. In this case, Dr. R. Nagvenkar who has been examined by the appellant, has deposed that there is 5 % disability. From the evidence of CW.1 and CW.1, it can safely be assumed that the monthly income of the appellant was Rs.2,000/-, which comes to Rs.24,000/- per annum. The appellant at the time of the accident was aged about 43 years and, therefore, the appropriate multiplier would be 15. Five per cent, considering the amount, would be around 20,000/-. The appellant had to undergo treatment and also had to suffer physical and mental pains on account of the accident. Apart from that, he must not have been able to carry out his work at least for a period of 3 to 4 months.

Taking an overall view, a further sum of Rs.20,000/- is to be added to the compensation which would come to Rs.40,000/-. That will carry 8 % interest per annum from the date of claim petition i.e. 27.10.1993 till final payment. There was insurance policy. Hence the liability is joint and several. Insurance Company is directed to deposit the said amount

within 12 weeks from today. The Claims Tribunal on an application being and on appellant being identified, to pay the amount to the appellant.

F.I. REBELLO, J.

ssm.